No. 77-1108

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

LOUIS A. ANTAL,

Petitioner,

v.

W. A. ("TONY") BOYLE, GEORGE TITLER, JOHN OWENS, and UNITED MINE WORKERS OF AMERICA,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF RESPONDENT JOHN OWENS IN OPPOSITION

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The Respondent, John Owens, respectfully opposes the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit dated September 1, 1977.

QUESTION PRESENTED

The Petitioner has stated the question in terms of a "union officer pension plan". This is a mis-statement in that the beneficiaries of the pension trust agreement in-

clude all employees of the international Union and the employees of all thirty-one districts. The pertinent provision in the indenture states as follows:

> "8. . . . The beneficiaries of this Trust herein sometimes called 'employees', shall be every regular full-time employee, excluding temporary or part time employees of the Trustor, and including employees of its Districts numbered one through thirty-one, inclusive, but excluding District Number 50." [1]

Therefore, the "Question Presented" should be:

Does the public policy of strict fiduciary accountability embodied in Section 501 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 501, countenance a spendthrift provision in a Union employee pension trust agreement thwarting collection by a labor union of judgments against its former officers for large-scale breaches of fiduciary duty?

STATEMENT OF THE CASE

Petitioner's statement of the case is essentially correct except in two significant points.

I. Petitioner Antal Has No Standing.

The sole Petitioner in this case was one of forty-two original derivative plaintiffs who filed a complaint in 1969. Thereafter, when the individual defendant officers were defeated, the United States Court of Appeals for the District of Columbia Circuit permitted the realignment of the parties with the United Mine Workers becoming the plaintiff rather than the nominal defendant and in a footnote to that Opinion stated:

> "In view of the realignment of the U.M.W.A. as party-plaintiff, and with particular regard to the

[1] The entire text is set forth in the Joint Appendix, page 50. See also, Joint Appendix 69, "The Pension Trust Agreement".

> withdrawal by the U.M.W.A.'s house counsel of their appearance on behalf of the plaintiff-appellees and counsel's current representation of the U.M.W.A. in the action, it is our understanding that the plaintiff-appellees will move the District Court for leave to be dropped as party-plaintiff. *See Lazar* v. *Merchants' Nat'l Properties, Inc.*, 22 A.D.2d 253, 254 N.Y.S.2d 712, (Supreme Ct. 1964)."
>
> *Weaver* v. *UMWA, et al.*, 160 U.S.App.D.C. 314, 492 F.2d 580 (1973), footnote 35.

This understanding was not realized, for on June 7, 1974 the caption was amended but the individual plaintiffs remained on the caption in error.

After judgment was rendered against the three officers, the defendants moved to amend the judgment to indicate correctly that the judgment was on behalf of the Union alone. This motion was denied by the District Court on June 16, 1976 upon the grounds, *inter alia*, that an appeal was pending and the "Court of Appeals has not granted leave to correct our memorandum and order . . .".[2]

The lack of standing on the part of Petitioner becomes crucial, for as asserted in the Petition, "Petitioner Antal has been advised by the Union that it will not seek review of the panel decision." [3] Yet, the Union is the judgment creditor, seeking to satisfy its judgment through the attachment of a trust wherein it is the grantor. The Petitioner is neither and has no standing before this Court.

II. Barring Attachment, the Judgment Will Not Be Satisfied.

Petitioner exceeds the confines of the Record by his assertion that, ". . . barring attachment of the pension will thwart satisfaction of the judgment." [4]

[2] Order filed June 16, 1976, Corcoran, J.

[3] Petition for Certiorari, page 4.

[4] Petition for Certiorari, page 4.

There is no evidence in the Record to support this statement, particularly with regard to the Respondent Owens. In fact, as the District Court pointed out, "The U.M.W.A. may levy additional attachments on other assets of the Defendants, as authorized by law . . . We express no opinion on the propriety of attachments after pension payments have been disbursed to the defendants . . ." [5]

It is true that Chief Judge Bazelon makes the same contention in the Dissenting Opinion; [6] however, there is nothing in the record to support the view of the Petitioner or the dissent.

ARGUMENT

Petitioner relies principally upon *Highway Truck Drivers and Helpers Local 107* v. *Cohen*, 284 F.2d 162 (3d Cir. 1960) and *Johnson* v. *Nelson*, 325 F.2d 646 (8th Cir. 1963) as being inconsistent with the D.C. Circuit's Opinion in the instant case. Petitioner is over-reaching in his attempt to establish a division among the circuit courts.

Highway Truck Drivers and Helpers v. *Cohen, supra*, was a suit brought pursuant to 29 U.S.C. 501 and the Defendant officers were using Union funds to pay legal fees for their personal defense. The injunction against the practice was upheld. Obviously, such practice was "inconsistent with the aims and purposes of the Labor-Management Reporting & Disclosure Act." 284 F.2d 162, 164.

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[5] Footnote 12, Memorandum & Order, July 12, 1976, Corcoran, J. page 26A, Appendix to the Petition for Certiorari.

[6] "Because enforcing the spendthrift trust in this case would have precisely the same impact as a general exculpatory provision—insulation of the Appellees from the sanctions Congress saw fit to impose for violation of § 501—. . ." Dissenting Opinion, Appendix to Petition for Certiorari, page 13A.

Johnson v. *Nelson, supra*, also involved the payment of legal expenses arising out of a Union disciplinary action and the Executive Board of the national Union directed that these expenses be paid. This was held contrary to the fiduciary responsibility arising under § 501 of the Act.

These holdings are far removed from the view which Petitioner would seek to impress upon the spendthrift trust. The results would require this Court to legislate an entirely new provision to § 501(a) of Title 29. The provision reads as follows:

> ". . . A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

The pension trust which was the subject of this attachment was established in 1959 under the leadership of John L. Lewis to provide retirement benefits for *all* Union employees. The settlor is the United Mine Workers of America. The anomaly is that the settlor has now become the creditor and the individual Petitioner would require that the settlor be permitted to attach the funds which it has provided for the benefit of all employees, in spite of the anti-garnishment provisions which the Union inserted in the original indenture in 1959. Such contemplated action must also be considered in the light of the political upheaval which has taken place within the Union. The former officers have been defeated and the new leadership would attempt to reduce their pensions by nullifying the language in this trust. Such efforts must fail, unless it were shown that the pension, with its spendthrift provision, was established solely for benefit of the ousted officers in an effort to frustrate the judgment.

After defining the term "exculpatory", the Circuit Court stated:

"Thus to come within the language of the statute here, the spendthrift provision must purport to relieve Boyle of guilt, fault, blame or liability. The spendthrift provision does not purport to do so, and our dissenting colleague does not claim that it does. Boyle has not been exculpated in any way by the spendthrift provision. He remains guilty, at fault, blameworthy, and liable to the UMWA for the full amount of the judgment rendered against him.

* * * *

"The English language is marvelously flexible yet precise. Had the Congress—or the settlors of the trust—at any time desired to provide for an offset of the pension ordinarily to be paid to any beneficiary of the trust by reason of any liability, specific or general, flowing from a beneficiary to the trust, either could have said so. This they did not do, . . ." *UMWA* v. *Boyle, et al.*, No. 76-1871 (D.C. Cir. 1977).[7]

The legislative history of the Labor Management Reporting and Disclosure Act[8] confirms this precise view of the English language. The Committee Report states that:

> ". . . the Committee bill also explicitly invalidates any general provision in a union constitution or bylaws purporting to excuse union officials from breaches of trust . . ." 2 U.S. Code, Congressional and Administrative News 2318, 2480 (1959).

This is an *explicit* provision in the Act which prohibits exculpatory provisions in constitutions and bylaws. The spendthrift provision is neither exculpatory nor is a trust included in the explicit provision. Petitioner would ask this Court to rewrite the statute.

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[7] Appendix to Petition for Certiorari, page 4a.

[8] 29 U.S.C. 501.

It is well established that a spendthrift trust is not totally immune from the claims of creditors. There are valid exceptions, but the Petitioner here would ask this Court to fashion a new exception which has never been proposed before. The recognized exceptions to the enforceability of the spendthrift provision are set forth in the *Restatement of Trusts*, 2d, § 157 (1959 Ed.). See also, Bogert, *Trusts and Trustees*, § 227, 2d Ed. 1965); Scott, II, *Trusts*, § 157 (3d Ed. 1967); Griswold, *Spendthrift Trusts*, § 362 (2d Ed. 1947).

The most recent case in the District of Columbia is *American Security and Trust Co.* v. *Utley*, 127 U.S.App. D.C. 235, 382 F.2d 451 (D.C. Cir. 1967). The opinion, written by Chief Justice Burger, then a circuit judge, stated that:

> "We have long recognized the validity of the so-called spendthrift trust, but not without limitations. The historical purpose of a settlor or trustor in creating a trust, the income of which was protected from invasion, was to protect the interest of the beneficiary." 382 F.2d at 452.

The invasions of a spendthrift provision have been limited in the District of Columbia and generally do not exceed those as set forth in the *Restatement, supra.* See *Seidenberg* v. *Seidenberg*, 96 U.S.App.D.C. 245, 225 F.2d 545 (1955); *Liberty Nat'l Bank* v. *Hicks*, 84 U.S.App. D.C. 198, 173 F.2d 631 (1948); *Buchanan* v. *Nat'l Savings and Trust Co.*, 79 U.S.App.D.C. 278, 146 F.2d 13 (1944); *Morrow* v. *Apple*, 58 App.D.C. 171, 26 F.2d 543 (D.C.Cir. 1928).

In *Liberty Nat'l Bank* v. *Hicks*, *supra*, the settlor included a spendthrift provision in a trust established pursuant to a property settlement agreement prior to a divorce. Subsequently, upon re-marriage and the birth of a child, the settlor sought to revoke the trust in order to obtain the corpus for the benefit of his new family.

The court acknowledged the proposition that a spendthrift provision established by the settlor in favor of himself as beneficiary is void particularly when creditors seek to invade the provision. However, the court would not permit the settlor to invade the provision for his own benefit, with the emphasis being on the rights of the innocent beneficiary.

Here the Petitioner would seek authority for the settlor to invade the spendthrift provision which it has established, the invasion being for its own benefit. The rights of the innocent beneficiaries of the Union's pension trust, both present and future, must be considered. The rights of virtually thousands of employees of the United Mine Workers could be affected if this spendthrift provision is invaded.

CONCLUSION

It is therefore submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

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